

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1340 of 1987

WITH

CIVIL REVISION APPLICATION No 1341 of 1987

WITH

CIVIL REVISION APPLICATION No 1342 of 1987

WITH

CIVIL REVISION APPLNS. NOS 395 TO 409 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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JAYANTILAL MANILAL & CO

Versus

RAJNIKANT NAGINDAS  
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Appearance:

MR HB SHAH for Petitioner

MR HB KANSARA for Respondent No. 1  
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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/10/97

ORAL JUDGEMENT

1. The petitioners-defendants who happened to be the

respondents in the proceedings of appeal before the appellate bench of the Ahmedabad Small Causes Court have preferred these revision applications u/S. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act") against the fixation of standard rent as per the contractual rent by the appellate Court reversing the judgment and order passed by the trial Court, which reduced the contractual rent by 50% for arriving at the standard rent of the respective premises. The table showing the respective suit no., name of the petitioner-defendant, civil appeal no. and the civil revision application no. alongwith the standard rent fixed by the trial Court and the standard rent fixed by the appellate Court is set out hereinbelow by recaptulating the particulars from the judgment of the appellate Court :

CRA NO.	Appeal	HRP	Name of Deft./	Std.rent	Std.rent
No.	Suit	petitioner	by trial	by appe-	
No.	Court.	llate			
	Court				
	p.m.	p.m.			
	Rs.ps.	Rs.	ps.		

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1340/87	356/83	3105/79	Jayantilal	34.00	68.00
			Manilal & Co.		

1341/87	343/83	3334/78	Bhamvarlal	30.00	60.00
			Ghisumal		

1342/87	361/83	4324/79	Parasmal	32.00	64.00
			Girdharilal		

395/88	354/83	1808/81	Chandulal	27.50	55.00
			Jaychanddas		

396/88	346/83	3107/79	Shree Ram	27.50	66.00
			Cloth Stores		

397/88	351/83	4323/79	Mayurkumar	33.00	66.00
			(356) Pravinchandra		

398/88	344/83	1818/81	Revaben	30.50	61.00
			Tribhovandas		

399/88	362/83	3106/79	Motilal	25.00	50.00
			Ganeshdas Patel		

400/88	363/83	3454/79	Babulal	32.00	64.00
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Girdharilal

401/88 364/83 3337/78 Vimalaben 39.00 78.00

Achaldas Jain

402/88 366/83 3110/79 Kapilaben 26.50 53.00

Girdharlal

403/88 368/83 3455/79 Shri Ram 33.00 55.00

Textiles

404/88 345/83 3109/79 Shardaben 52.00 104.00

Ambalal

405/88 357/83 3457/79 Hajarimal 34.50 69.00

Kapurchand

406/88 358/83 3335/78 Babulal Somdas 30.00 60.00

407/88 365/83 3629/78 Danmal Kapurji 38.00 76.00

& Kantilal

Pritamji Shah

408/88 352/83 3104/79 Keshavlal 33.50 67.00

Chhaganlal Patel

409/88 355/83 4322/79 Laxminarayan 50.50 101.00

Pavankumar.

2. It appears that the respondents filed respective suits for recovering arrears of rent at the rate of contractual rent and possession of the suit premises in the respective suits on the ground of arrears of rent as available u/S. 12 of the Rent Act. The suits were accordingly filed before the Ahmedabad Small Causes Court. The learned Judge of the Ahmedabad Small Causes Court by his judgment and decree dated 29/9/1983 dismissed the respondents' suits for possession and fixed the standard rent as aforesaid saying the same would be exclusive of municipal taxes, education cess, electric burning charges and other charges of the respective shops. The respondents did not pursue the claim of possession, but certainly made grievance with regard to the amount of standard rent fixed by the trial Court. Upholding the respondents' grievance the appellate Court fixed the contractual rent of the respective premises as the standard rent thereof and the particulars of such standard rent are stated in the aforesaid table. There appears to be some mistake in the statement of particulars in so far as Civil Suit No. 3107 of 1979 and

Civil Suit No. 3455/79 are concerned. However, the fact remains that the appellate Court fixed contractual rent as the standard rent maintaining the rest of the order passed by the trial Court except the order with regard to arrears of rent claimed in the suit. The appellate Court accordingly decreed the respondents' respective suits with no order as to cost.

3. In the background of the aforesaid facts the petitioners being the defendants are before this Court in these civil revision applications, which have been heard and are being disposed of by this common judgment.

4. Mr. H B Shah, learned advocate appearing for the petitioners has submitted that the trial Court appreciated the evidence (oral evidence) and when the trial Court accepted such evidence for the purpose of finding that the agreed rent was excessive and for the purpose of coming to the conclusion that reasonable and fair rent would be 50% of the contractual rent, there was no reason for the appellate Court to disagree with the finding of the trial Court. It would, therefore, be appropriate to see how the appellate Court has dealt with the matters in appeal. It is not in dispute that the matters came to be decided on oral evidence and documentary evidence was not placed on record, more particularly by one of the petitioners who was in possession of relevant documentary evidence. The appellate Court, therefore, appears to have taken up each piece of oral evidence for finding out whether the trial Court rightly appreciated the evidence. The appellate Court approached the problem from the stand point of the agreed rent being the rent of first letting. The appellate Court, therefore, undertook exercise of finding out whether the agreed rent was exorbitant or excessive or not reasonable.

5. The first witness examined before the trial Court on the question was Bhanuprasad Hagindas exh. 29. He was examined for the purpose of saying that originally there was a bungalow of a private party, namely one Mr. Manilal C. Mistry, now not alive, and said bungalow was valued at Rs./1,18,000/-. The bungalow was demolished and a market known as Jekorbhai (Jekorbai) market was constructed and the shops were let out. The land is a lease hold land from the Government. There was an agreement between the owners of the land and one Chandulal Narandas for construction of a market on the land admeasuring about 370 sq. yds. Such agreement was arrived at in the year 1973. The bungalow was, therefore, demolished and market was constructed

somewhere in the year 1974. There were tri-partite agreements between the constructor, Shri Pari Chandulal and the respondents and the tenants regarding the ground rent of the disputed land. As per such agreements the respondents were entitled to recover ground rent at the rate of Rs.5,000/- per month and the rent of each of the petitioners came to be fixed according to the constructed area in his/her respective possession. The lease hold rent payable to the Government was Rs.450.45 ps. per month. Now this piece of evidence would not throw any light on the reasonableness or otherwise of the contractual rent.

6. Reference has then been made to the oral evidence of Chandulal Jaychand exh. 31, who has deposed to the purchase price of his office being Rs.9,000/- and the rent payable by him and the rent payable by the respondents to the State Government at the rate of Rs.4/per sq. yd. He has in this fashion tried to justify the claim regarding reduction of the standard rent. However, certain factors which the appellate Court has discussed will positively go to indicate that the evidence of this witness would not be sufficient and appropriate for holding that the standard rent would be less than the contractual rent.

7. Next witness is Champaklal Parshotamdas exh. 41. This witness has referred to land bearing survey no. 1706 situated near Sarangpur Darwaja admeasuring 103 sq. yards leased out with super-structure to one Bhavandas Hojdas in the year 1969 for 999 years. Witness also produced lease deed exh. 43 showing yearly rent of Rs.5250/-. Witness has then said about the distance being 100 to 150 ft. of the said property from the suit property.

8. Next witness who has been examined is Hirachand Gangaram exh. 44, carrying on business in the name of Lungadamal Gangaram & Company, having hired the land admeasuring 1604 sq. yds. from the firm of Dhruvkumar at the yearly rent of Rs.10,000/- for 99 years. He has deposed that he charged 10 paise per sq. ft. per month for each of the shops in the market so constructed and speaking about the distance he has stated that from this market Jekorbhai market is at a distance of 200 ft.

9. Then there is one Ratimal Maganlal Rana, exh. 45 carrying on business in the name of Jay Bharat Chopda Bhandar, being a tenant of the shop admeasuring about 10' x 16' for the rent of Rs.20/- exclusive of taxes situated in Panchkuva Kapda Bazar, from where the disputed property is at a distance of 40 to 50 ft. He has also

deposed about one shop in his possession in Revdi Bazar area, that shop admeasures about 11' x 17' and has been hired at the rent of Rs.70/- p.m.

10. Jagdish Nanalal Pandya exh. 48 is the last witness, whose evidence has been considered by the Courts below. He is in possession of one shop situated in Mulchand Asharam Building. The shop is admeasuring about 10' x 15' and hired at the rent of Rs.17/- p.m. exclusive of municipal taxes in the year 1970.

11. While appreciating the evidence of the aforesaid witnesses the appellate bench in the context of the provisions contained in section 11(1)(a) of the Rent Act pointed out that variety of circumstances such as rent charged by the landlords of the adjoining buildings or surrounding similar shops and prevailing rent at the time when the disputed premises are let out and the value of the property also at the time when the disputed premises are let out have to be borne in mind. Making efforts to find out whether such circumstances are disclosed from the oral evidence relied upon by the trial Court, the appellate Court has held that there is no evidence on record to come to the conclusion that the disputed land was let out to any body else at a rent less than the rent at which the same was let out for the first time to the petitioners. The appellate bench has considered that except the bare word of Chandulal there is no evidence to ascertain the price of the land referred to by the said witness. As stated above, the oral evidence of this witness has been held to be not of any help in coming to the conclusion regarding price of the land in question in the year 1974. Referring to Champaklal's evidence which has been relied upon by the trial Court for coming to the conclusion that the agreed rent was excessive and exorbitant, the appellate bench has said that the learned trial Judge has made comparison of two units not similarly situated from the stand point of the circumstances noted hereinabove. In my opinion, the learned Judges of the appellate court have rightly observed that while making comparison the Court must be cautious in finding out whether the comparable units are similar in situation, user, extent and amenities as also the price/value thereof at the relevant point of time. In my opinion, the appellate Court has, therefore, rightly discarded the evidence of Champaklal. Hirachands evidence is not at all of any help in reaching the conclusion on the question of fixation of standard rent. Ratilal's evidence also does not help the cause of the petitioners from the stand point of relevant considerations as noted hereinabove. The appellate Court

has, therefore, rightly observed as under :-

"It is well settled principle of law that the burden lies upon the tenant to show that the rent charged from him is excessive and exorbitant. In the present case, after discarding the evidence of witness Champaklal Parshottamdas, there is no other evidence to show that the rent charged by the appellants is excessive and exorbitant in comparison with the rents charged by the other landlords. In the similar way, there is no evidence regarding the value of the land let out to the defendants. Hence, we say that there is no evidence before us to disturb the agreed rent. According to our view, it is for the defendants to point out that the rent is excessive considering the prevailing rates of rent in the neighbourhood for similar premises let for the similar purpose."

12. There is one more aspect of the case. Chandulal Jaychand examined at exh. 31, who is also one of the defendants, did not produce the agreement referred to by him and, therefore, best evidence available to one of the defendants was not placed on record. The appellate bench, therefore, drew adverse inference against defendant on this count also. In my opinion, the approach of the appellate Court was quite legal, just and proper.

13. Having heard Mr. H B Shah, learned advocate for the petitioners, I am of the opinion that the judgments and orders passed by the appellate Court in the respective appeals under these revision applications are quite in accordance with law and there is no reason to disturb the same.

In the result, these revision applications deserve to be dismissed. Order accordingly.

Rule in each of these revision applications is hereby discharged with no order as to cost.

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